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Piracy in the Air

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INTRODUCTION

Aircraft hijacking has become a major problem, not only for the United States of America, but also for the Caribbean republics. In the month of January 1969 alone, eight scheduled U.S. commercial airliners were hijacked to Cuba, three more Latin American airliners also were hijacked to Cuba, and one more attempted U.S. hijacking was foiled by the aircraft crew. In addition, a Greek airliner was hijacked to Egypt in the same month.

These increasingly frequent hijackings not only represent an unwelcome interruption to normal air commerce and an inconvenience to passengers but also result in significant financial loss to both airlines and passengers. Their most serious aspect, however, is the potential they hold for tragedy. The use of firearms or violence against the crews of commercial airliners could easily result in the death of a hundred or more passengers through the crash of a loaded jetliner.

This paper analyzes all reported hijacking incidents to determine the conditions which give rise to hijacking, the motivations of the hijackers, and the reasons why past efforts to suppress hijacking have met with little success. Both current and proposed international law are analyzed to assess their adequacy to cope with this problem. The paper demonstrates that current international practice impedes effective suppression of hijacking through prosecution of the hijackers and then

examines current diplomatic and technical efforts to create new procedures for the suppression of hijacking.

I—PATTERNS OF HIJACKING

The Effects of Hijacking. The most serious effect of hijacking is the potential it holds for tragedy. A hijacking, by definition, is accomplished by violence or threat of violence against the crew or passengers of an aircraft in flight in order to seize control of the aircraft and force its diversion from its scheduled destination. It takes little imagination to visualize the dangers inherent in the employment of firearms, grenades, or explosives by nervous, desperate, and possibly unbalanced persons in a loaded passenger jet flying at 30,000 feet. It seems a miracle that a hijacking attempt has not yet caused the crash of a U.S. airliner, although several airliners of other nations are reported to have crashed as a result of hijacking attempts, including at least one Cuban and one Soviet aircraft. As President Kennedy said, "an airliner is a peculiarly unsuitable shooting gallery. There are usually only two or three persons aboard who can fly it, and if they are killed or incapacitated, the chances of landing safely are practically nil."[1]

Even if the aircraft commander peacefully complies with the demands of the hijacker, he is usually unfamiliar with the foreign airport at which he is directed to land, sometimes encounters linguistic difficulties in communicating with the control tower, and the destination airfields frequently are not equipped with the sophisticated landing aids which contribute to safety in landing jet aircraft. Thus, many dangers to the innocent passengers are inherent in any hijacking.

Hijacking also represents a substantial economic loss to the airline involved. Not only does it have to defray the direct costs of landing fees and care and feeding of its passengers, but it also suffers a far more substantial loss in being deprived of the use of a multimillion dollar airliner scheduled for other subsequent tasks. For example, the average direct charge levied against the airline by the Government of Cuba has been about $2,000, with the most expensive item being the feeding and care of the passengers in Cuban tourist accommodations. The indirect costs of loss of use of the airliner are far higher, with various airlines estimating losses of up to $25,000 per incident.[2]

The mere threat of hijacking has caused the U.S. Government to restrict the travel of certain officials. Newspaper and magazine accounts indicate that Government officials having sensitive security information are no longer permitted to fly on commercial aircraft in the southeastern United States. Key aides commuting between Washington and President Nixon's vacation White House in Florida now travel by Government aircraft to avoid the risk of being hijacked to Cuba. The CIA also has forbidden its personnel to travel by commercial air, and employees of the U.S. Atomic Energy Commission are required to use trains or government aircraft when traveling with secret documents.[3]

Scope of Analysis. Through analysis of past hijacking incidents, clues and patterns can be sought which may point the way toward effective measures to suppress this practice. The analysis in this chapter is based on the 77 international hijacking incidents occurring between 1 January 1960 and 31 January 1969. Although other hijackings have occurred since January 1969, they have not been included in the statistical analysis, primarily because so little information about them has yet emerged as to make it impossible to determine the identity, background, or apparent motivations of the hijackers. This hijackers problem also applies, to a large extent, to the January 1969 cases, but

they have been included because they demonstrate the astronomical growth in incidence of hijacking.

For the purposes of this analysis, unsuccessful attempted hijackings are included since they seem to reflect the same patterns as successful hijackings and represent an equal, if not greater, danger to passengers. The growing problem of hijacking is analyzed in terms of nationality of the aircraft involved, destination of the hijackers, attitudes of the states in which the aircraft landed, and reported prosecution of hijackers.

Growth Of The Problem. Hijacking of aircraft was practically unknown before 1960. The earliest reported incidents involved three Czechoslovakian aircraft seized by refugees who compelled the pilots to fly to the U.S. Zone of Occupied Germany in 1950.[4] A few Cuban aircraft were hijacked to the United States in 1959 by refugees from the Castro regime, but these generally were reported only as the arrival of political refugees, and the newspaper accounts do not contain sufficient data to determine which were hijackings and which were merely unauthorized flights of privately owned aircraft out of Cuba. Although only eight such cases have been documented by this writer, President Kennedy was quoted in August 1961 as saying that 25 Cuban aircraft had been brought to the United States by defectors.[5]

As shown in table I, the incidence of hijacking remained relatively low until 1968, with an average of only four cases per year. In 1968 there was a tremendous increase with 31 hijackings, and 1969 promises another significant increase with 13 cases reported in the first month alone. Although some portion of this increase might be ascribed to the general increase in air commerce, the recent phenomenal growth in the number of hijacking incidents far exceeds the corresponding growth in air travel.

States of Registry. The state suffering most from aircraft hijacking up to 1961 was Cuba. In 1961 Premier Castro installed police state controls on aircraft travel and the number dramatically dropped so that only one Cuban aircraft has been successfully hijacked since 1961. Commencing in 1961, the United States began to have a serious problem, with four aircraft of U.S. registry being hijacked to Cuba in that year. The number then declined until 1968 when hijackings burst forth in full fury. During 1962-1967, an average of three hijackings per year occurred, involving aircraft of the United States, the Netherlands, Venezuela, the U.S.S.R., Cuba, Argentina, Egypt, the United Kingdom, and Colombia. The tremendous increase in 1968-69 has affected only aircraft of United States and Latin American registry. The number of incidents involving aircraft of other nations never has risen above three per year.

Destination. As shown in tables I and III, the pattern of destination of hijacked aircraft has changed with time. The three 1950 Czech hijacked airliners landed in the U.S. Zone of Germany. Of the five hijackings reported in 1960, four landed in the United States. Commencing in 1961, Cuba became an important recipient of hijacked airliners. Even though the total number of hijackings remained low between 1961 and 1967, 12 of the 27 incidents involved Cuba as a destination state. In 1968, 28 out of 31 hijackings involved Cuba, and in the first month of 1969 12 out of 13 were destined for Cuba.

Nationality of Hijackers. Except for hijackings of aircraft of United States or Cuban registry, there is no discernible pattern of nationality of hijackers. The one exception to this general statement is the Colombian and Venezuelan aircraft hijacked to Cuba. In those cases the hijackers were generally Colombian or Venezuelan nationals who were

engaged in Cuban-supported insurgencies in their homeland. For U.S. aircraft there is clearly discernible pattern, as illustrated in table II. Of the 26 cases in 1968-69, 17 were hijacked by U.S. citizens, six by Cubans, and three by nationals of other states. Thus the popular newspaper stereotype of the lonesome Cuban refugee hijacking an airliner to return to his homeland is only true in less than one-fourth of the cases.

Apparent Motivation of Hijackers. In 58 of the 77 cases there is sufficient data available to establish motivation of the hijackers. These motivations fall into five general groupings, each of which is discussed below.

Escaping Political Refugees. The seizure of an aircraft by a desperate political refugee seeking to flee an oppressive regime was an important motivation in early years. The three 1950 Czech cases, the four attempted hijackings of Soviet aircraft, and almost all of the 1959-1961 Cuban cases fall into this category. However, since 1966 only one hijacking incident can be ascribed to this motivation, so it is no longer of major significance.

Escaping Criminals. Only five

TABLE I—INCIDENCE OF HIJACKING, 1960-1969

Year	Total Hijackings	Type of Service		Ultimate Destination		
		Scheduled	Charter	Cuba	U.S.	Other
1960	5	5			4	1
1961	9	8	1	4	2	3
1962	2	1	1	1		1
1963	2	1	1	1		1
1964	2	1	1	1		1
1965	3	3		2		1
1966	4	4			1	3
1967	6	4	2	3		3
1968	31	24	7	28		3
January 1969	13	13	—	12	—	1
Total	77	64	13	52	7	18

TABLE II—NATIONALITY OF PERSONS WHO HIJACK U.S. AIRCRAFT

Year	U.S.	Cuban	Other
1961	2	1	1 (France)
1962	1		
1963	1	1	
1965	1	1	
1967	1		
1968	11	6	1 (Unknown)
January 1969	6		1 (Unknown)
	—	—	1 (Dominican Republic)
Total	23	9	4

TABLE III—MOTIVATION OF HIJACKERS

Date	Aircraft Registry	Landad In	Hijacker's Background Mental	Criminal	Apparent Motive
5 July 1960	Cuba	United Stetes			Political Refugee
19 July 1960	Austrelia	Singapore*			Unknown
28 July 1960	Cuba	United States			Political Refugee
29 Oct 1960	Cuba	United States			Political Refugee
8 Dec 1960	Cuba	United States			Political Refugee
1 May 1961	United States	Cuba	X		Attention Seeker
3 July 1961	Cuba	United States*			Political Refugee
24 July 1961	United States	Cuba			Unknown
3 Aug 1961	United States	Cuba*	X	X	Unbalanced
9 Aug 1961	United States	Cuba	X		Attention Seeker
9 Aug 1961	Cuba	United States*			Political Refugee
10 Sep 1961	U.S.S.R.	Unknown*			Political Refugee
10 Nov 1961	Portugal	Spanish Morocco			Political Act
27 Nov 1961	Venezuela	Curacao			Political Act
13 Apr 1962	United States	Cuba			Unknown
16 Apr 1962	Netherlands	East Germany*			Unbalanced
5 Aug 1963	United States	Cuba*			Unknown
28 Nov 1963	Vanezuela	Trinidad			Political Act
18 Feb 1964	United States	Cuba		X	Criminal Fugitive
Fall 1964	U.S.S.R.	Unknown*			Political Refugee
Spring 1965	U.S.S.R.	Unknown*			Political Refugee
26 Oct 1965	United States	Cuba*			Transportation
17 Nov 1965	United States	Cuba*			Unbalanced
27 Mar 1966	Cuba	United States*			Political Refugee
7 July 1966	Cuba	Jamaica			Political Refugee
Spring 1966	U.S.S.R.	Turkey*			Political Refugee
28 Sep 1966	Argentina	Falkland Islands			Political Act
7 Feb 1967	Egypt	Jordan		X	Unknown
23 Apr 1967	Nigeria	Nigeria			Political Act
30 Jun 1967	United Kingdom	Algeria		X	Political Act
6 Aug 1967	Colombia	Cuba			Transportation
9 Sep 1967	Colombia	Cuba			Transportation
20 Nov 1967	United States	Cuba		X	Unknown
9 Feb 1968	United States	Hong Kong*			Escape
17 Feb 1968	United States	Cuba	X		Unbalanced
21 Feb 1968	United States	Cuba		X	Criminal Fugitiva
5 Mar 1968	Colombia	Cuba			Transportation
12 Mar 1968	United States	Cuba			Transportation
16 Mar 1968	Mexico	Cuba			Unknown
22 Mar 1968	Venezuela	Cuba			Transportation
19 Jun 1968	Venezuela	Cuba			Transportation
29 Jun 1968	United States	Cuba			Unknown
1 July 1968	United States	Cuba			Transportation
4 July 1968	United States	Mexico*		X	Criminal Fugitive
12 July 1968	United States	Cuba			Unbalanced
12 July 1968	United States	Cuba*	X		Unbalanced
17 July 1968	United States	Cuba			Transportetion
23 July 1968	Israel	Algeria			Political Act
4 Aug 1968	United States	Cuba		X	Unbalanced
22 Aug 1968	Bahamas	Cuba			Unknown
11 Sep 1968	Canada	Cuba*		X	Criminal Fugitive
20 Sep 1968	United States	Cuba	X		Transportation
22 Sep 1968	Colombia	Cuba			Transportation
22 Sep 1968	Colombia	Cuba			Transportetion

TABLE III—MOTIVATION OF HIJACKERS (continued)

Date	Aircraft Registry	Landed In	Hijacker's Background Mental	Criminal	Apparent Motive
6 Oct 1968	Mexico	Cuba			Unknown
23 Oct 1968	United States	Cuba			Unknown
4 Nov 1968	United States	Cuba			Attention Seeker
18 Nov 1968	Mexico	Cuba			Unknown
23 Nov 1968	United States	Cuba			Transportation
24 Nov 1968	United States	Cuba			Political Act
30 Nov 1968	United States	Cuba			Transportation
3 Dec 1968	United States	Cuba			Transportation
11 Dec 1968	United States	Cuba			Unknown
19 Dec 1968	United States	Cuba			Unbalanced
2 Jan 1969	United States	Cuba		X	Attention Seeker
2 Jan 1969	Greece	Egypt			Political Refugee
7 Jan 1969	Colombia	Cuba			Transportation
9 Jan 1969	United States	Cuba			Attention Seeker
11 Jan 1969	United States	Cuba	X		Unbalanced
11 Jan 1969	Peru	Cuba			Unknown
13 Jan 1969	United States	Cuba*	X	X	Unbalanced
19 Jan 1969	United States	Cuba			Unknown
19 Jan 1969	Ecuador	Cuba			Unknown
24 Jan 1969	United States	Cuba			Escape
28 Jan 1969	United States	Cuba		X	Criminal Fugitive
28 Jan 1969	United States	Cuba			Unknown
31 Jan 1969	United States	Cuba			Unknown

*Indicates unsuccessful attempted hijacking. State shown is the intended destination of the hijacker.

cases clearly fall into this category, although several recent cases might be so classified if more information were available on the haekground of the more recent hijackers. However, it is most significant tbat four of these five cases oecurred in 1968-1969, and all but one went to Cuha, the inferenee being that these fugitives felt they would be safe from prosecution if they reaehed Cuba.

Political Acts. Eight eases were clearly political aets eommitted by dissidents or insurgents. Three of these eases involved hijacking of airliners in order to drop political leaflets. The famous El Al case (23 July 1968) in which Arab terrorists hijacked an Israeli airliner to Algeria as an "act of war" and the famous Tshombe case (30 June 1967) also fall into this category. It is significant to note that only one of these eight cases involved either the United States or Cuba and that six of them oeeurred before the dramatie inerease in hijacking cases in 1968. Thus, this motivation is not responsible for the rapid rise in hijaekings.

Transportation. Sixteen hijaeking cases ean be aseribed to persons seeking transportation to Cuba, and they fall into two distinet groupings. Eight eases, all in 1967-69, involved Castroite guerrillas from Colombia or Venezuela seeking transportation to Cuba. Sehe-duled commercial air serviee between Cuba and these countries does not exist,[6] and even if it did, the guerrilla hijaekers probably would have been unwilling to risk the required governmental eustoms and immigration eheck to board a seheduled international flight.

The other eight cases, seven of which occurred in 1968, involved Cuban refugees in the United States returning to Cuba. These are the only cases which fit the popular newspaper stereotype of the lonesome refugee returning home, and almost all of these cases involve refugees who were not only lonesome but also spectacularly unsuccessful in the United States. Most of them had been fired recently from their jobs, many had health problems, and some had psychiatric histories. These hijackers were among life's losers and, to that extent, possibly could also have been classified in the next category.

Unbalanced Persons. This category, which includes both attention seekers and other unbalanced persons, accounts for the largest group or 16 out of the 58 cases in which apparent motivation can be classified. It is also responsible for a major portion of the 1968-1969 increase in hijackings. These cases cannot be dismissed merely as mental aberrations, however, since 15 of the 16 hijackers wanted to go to Cuba, indicating a clear pattern of rational thought.

The Chief Surgeon of the Federal Aviation Administration has hypothesized a "hijacker's syndrome," in which the hijacker believes he can prove himself an effective human being by commanding an airliner to go to Cuba and being welcomed there as a hero by Castro.[7] A few examples of cases which clearly fall into the category of attention seeking include:

> 1 May 1961: The hijacker listed his name on the ticket as "El Pirata Cofrisi," the name of a famous 18th century Caribbean pirate.
>
> 17 February 1968: A white U.S. hippie, married to a Negro go-go dancer, who had recently been fired from his job, hijacked a plane to Cuba saying he "planned to go to Hanoi."
>
> 4 November 1968: A "Black Nationalist Freedom Fighter" hijacked a U.S. airliner to Cuba. He collected the passenger's pocket money, saying it was "contraband of war," and announced "we're taking a new ship every day for 100 days for a new Africa, to show the white people we're keeping them down."
>
> 9 January 1969: A Purdue University student hijacked an airliner to Cuba, saying he hated the United States, had just completed a Communist mission, and was fleeing from the FBI.

Another grouping of cases involves inadequate, unsuccessful persons who have a long history of criminal, mental, marital, and financial problems and who are running away from an unsuccessful life to start over in Cuba. Examples of hijackings by such "losers" are:

> 3 August 1961: A U.S. citizen with a long mental and criminal record and his 16-year old son attempted to hijack an airliner with the intention of selling it to Castro.
>
> 12 July 1968: A suspected homosexual, who had serious financial problems and had recently been fired as a teacher in Williamsport, Pa., hijacked a plane to Cuba.
>
> 4 August 1968: An Army deserter, recently divorced, picked up his 3-year old daughter from his estranged wife for a day's visit and hijacked a plane to Cuba, taking the daughter along.
>
> 13 January 1969: The hijacker had been unemployed for over a

year, had a history of mental problems, a criminal record, and also had marital difficulties. When the stewardess fled into the pilot's compartment and locked the door, he meekly sat down and waited to be arrested upon landing.

The common thread that runs through this whole category of cases is the idea in the hijacker's mind that he could start life anew in Cuba, gaining fame, glory, and recognition in the process.

Attitudes of Destination States. Important clues towards solution of the problem of hijacking can be gained from a study of the actions taken and the statements made by the governments of the states in which the hijacked aircraft were landed. For this purpose, only three states are significant: the United States, Cuba, and Algeria.

In every case in which an aircraft has been hijacked from some other state to the United States, the U.S. Government has treated the hijackers as political refugees, granting asylum and admitting the hijackers as residents. Asylum even was granted in a case where a Cuban Government guard aboard the aircraft was murdered by the hijackers. Conversely, in every case in which the United States has obtained custody of a hijacker of an aircraft of U.S. registry, the hijacker has either been vigorously prosecuted or committed to a mental institution. In the case of Cuban aircraft hijacked to the United States in 1959-1960, many were seized to satisfy court judgments for Cuban Government debts, and at least nine were sold.[8] Only after Cuba had detained a hijacked U.S. airliner in July 1961 did the U.S. Government adopt a new policy of releasing hijacked Cuban aircraft for return to Cuba. As a 1961 editorial in *The Nation* observed, "it makes some difference whose aircraft is hijacked."[9]

The first U.S. airliner hijacked to Cuba (1 May 1961) was released immediately for return to the United States, although the hijacker remained in Cuba. On 24 July 1961, Castro refused to release a hijacked U.S. airliner until the United States released Cuban aircraft held in the United States, although he did release the passengers promptly. Since the U.S. Government commenced returning Cuban aircraft, Cuba has consistently released hijacked aircraft, usually within 24 hours or less.

A consistent Cuban procedure has emerged. Upon landing, the hijacker is taken away by Cuban guards. Then the passengers and crew are deharked and interrogated, usually being asked propaganda-type questions such as their attitude toward the war in Vietnam. Negroes are frequently asked about their attitude toward life in the United States. Until mid-1968 the passengers and crew then reboarded the aircraft and returned to the United States. The same procedure was followed for Latin American aircraft, except that the Cubans occasionally gave a party for the Latin American passengers and attempted to impress them with progress in Cuba under the Castro government.

Commencing on 1 July 1968, the Castro government has maintained that the Jose Marti Airport at Havana is unsafe for the takeoff of loaded modern jets. The crew and empty airliner are released and allowed to return. The passengers are bused to Varadero where they are returned aboard propeller aircraft chartered by the U.S. State Department for the daily Cuban Refugee Airlift. That this is a minor form of harassment or twisting of Uncle Sam's tail was evident from the fact that loaded Iberia Airlines DC-8's and Soviet jet airliners operate regularly out of Jose Marti.

Two changes in the consistent Cuban pattern emerged in February 1969. On 10 February 1969, the Cuban Government allowed a U.S. airliner to return

directly to the United States with its full passenger load, detaining the hijacker in Cuba.[10] This apparently represents an abandonment of the harassment policy and may signal an improvement in United States-Cuban relations. A second change in pattern occurred on 11 February 1969 when the Cuban Government delayed for 5 days the release of a hijacked Venezuelan airliner in reprisal for Venezuelan seizure of a Cuban fishing boat last November.[11]

Information on the fate of hijackers in Cuban hands is far more difficult to obtain. Newspaper accounts, reports filtering back to relatives, and the stories of the few hijackers who have returned voluntarily indicate that the hijackers are invariably detained in Cuban jails for a period ranging from a few weeks to a few months while they are screened to determine whether they are CIA agents or mental cases.[12] After screening, Cuban refugee hijackers usually are allowed to return to their former homes. Others are assigned as agricultural workers, usually on the Isle of Pines. Non-Cuban hijackers who tire of life in Cuba occasionally are allowed to depart.[13] In one case the Cuban Government, which still has normal diplomatic relations with Mexico, granted a Mexican request for extradition and returned the hijacker to Mexico for trial.

Although only two aircraft have been hijacked to Algeria, the international significance of these two cases is so great and the actions of the Algerian Government so unusual as to require analysis.

The Tshombe case involved the hijacking of a British aircraft carrying Moise Tshombe, the former Premier of the Congo. Tshombe, who had been granted political asylum in Spain, was en route from Ivisa, Spain, to Palma, Mallorca, when his chartered aircraft was hijacked on 30 June 1967 by a member of his party and forced to land at Boufarik Military Airfield in Algeria. Although the Algerian Government claimed to be surprised at the hijacking, the two British pilots commented that the reception committee at the Algerian military airport seemed to be unusually well organized on such short notice.

Tshombe had been tried in absentia by a Congolese court and sentenced to death. The Congo now requested extradition of Tshombe. The Algerian Supreme Court authorized extradition on 21 July 1967, but heavy international pressures caused the Algerian Government to withhold final approval. At last report, Tshombe was still in Algerian custody, 2 years after the hijacking.

The two British pilots were detained by Algeria for nearly 3 months, being released on 22 September 1967 only after lengthy diplomatic negotiations and a threatened stoppage for all commercial flights in and out of Algeria by the International Federation of Airline Pilots Associations. The aircraft was not released until 18 April 1968, 9 months after the hijacking. The hijacker, Francois Bodenan, a Frenchman with a very long criminal record, is believed to be still in Algerian custody.

The other Algerian case is equally famous, involving an Israeli El Al airliner hijacked to Algeria on a flight from Rome to Israel on 23 July 1968. The hijackers were Palestinian Arab refugees using Indian and Iranian passports. Algeria released immediately the non-Israeli passengers, but retained the aircraft, crew, and Israeli passengers on the basis that Algeria was still at war with Israel. After substantial international pressure and indignation, Algeria released the Israeli women and children 4 days later. On 14 August the International Federation of Airline Pilots Associations announced a boycott of all commercial flights to Algeria if the crew were not released by 18 August. After further negotiations with both IFALPA and Italy, which was acting as mediator, the boycott was called off, and Algeria

released the crew, remaining passengers, and aircraft at the end of August, apparently as part of a bargain involving the release of a number of Arab terrorists who had been captured by Israel.

Prosecution of Hijackers. The available information on prosecution of hijackers is far from complete. However, it clearly indicates that each state has vigorously prosecuted hijackers of aircraft of its own registry whenever it could secure custody of the hijackers. Punishments inflicted tend to be very severe.[14] The evidence also indicates a complete lack of interest in prosecuting hijackers of foreign aircraft which have landed within the state. There is no recorded instance where a hijacker has been prosecuted by the foreign state in which he landed; instead, the almost universal practice is to grant asylum.

Having examined the problem of hijacking, the motivations of the hijackers, and the attitudes of the states in which hijacked aircraft have landed, it is now necessary to examine current and proposed international law and its adequacy to deal with this problem.

II—CURRENT INTERNATIONAL LAW

Sovereignty in Airspace. Article 1 of the Paris Convention of 1919 firmly established the principle that every state has complete and exclusive sovereignty over the airspace above its territory.[1] The wording of the provision was repeated, practically unchanged, in the 1928 Havana Convention and 1944 Chicago Convention and is reflected in U.S. Federal law.[2] Sovereignty here means that the laws of the state in whose airspace an aircraft is in flight apply to offenses committed aboard the aircraft.[3]

Nationality of Aircraft. A concept of nationality of aircraft has evolved similar, but not identical, to nationality of ships. Article 6 of the 1919 Paris Convention and article 17 of the 1944 Chicago Convention provide that aircraft have the nationality of the state in which they are registered.[4] Nationality serves to identify the state which is responsible for the aircraft and entitled to come to its protection under international law.[5] The importance attached to the concept of nationality of aircraft is demonstrated by the Chicago Convention of 1944 which devotes a whole chapter of five articles to nationality.[6]

Jurisdiction. Jurisdiction is the authority by which courts and judicial officers take cognizance of and decide cases.[7] International law does not grant jurisdiction. Rather, it sets forth the basis under which states recognize the right of other states to assert jurisdiction. "When speaking of jurisdiction . . . one must be careful to distinguish the jurisdiction to enforce from the jurisdiction to prescribe. The former is inherently territorial, the latter is inherently personal."[8] Johnson describes five principles upon which jurisdiction may be founded: the territorial principle, the active nationality principle, the passive nationality principle, the universal principle, and the protective principle.[9]

The territorial principle of jurisdiction, which holds that each state may punish crimes committed on its own territory,[10] is a fundamental principle of all systems of law[11] as well as being the primary basis of jurisdiction in the United States.[12] However, in modern international law, to a great extent the rigid territorial basis of jurisdiction has been broken down.[13] In the case of aircraft hijacking, one difficulty with rigid adherence to the territorial principle is that the state in whose airspace the crime was committed usually is not the state in which the aircraft lands while the latter state may not have any real interest in suppressing hijacking.

The active nationality principle of jurisdiction provides that each state may punish crimes, wherever committed, of its own nationals[14] and is universally recognized.[15] The assumption of jurisdiction over ships and aircraft registered within the state (the "law of the flag") is a corollary of the territorial principle regarding ships and aircraft as having some of the properties of movable pieces of territory. It also draws upon the active nationality principle by regarding ships and aircraft, for some purposes, as legal persons having the nationality of the state in which registered. Thus, it is accepted law that the flag state has jurisdiction over its vessels anywhere in the world, but the applicability of this concept to aircraft is not so well established.[16]

Many states also assert penal jurisdiction under the passive nationality principle,[17] claiming the right to try offenses of which their nationals are victims, wherever situated.[18] O'Connell says this "is a corollary of the rule that any State may protect its own citizens abroad . . . The *Lotus* decision . . . is best rationalized on the passive personality principle."[19] However, jurisdiction on this basis is far from settled under international law, and is not recognized by many States, including the United States.[20]

The universal principle allows all states to take jurisdiction of heinous crimes which threaten the international community as a whole.[21] The best universally recognized example of such a crime is piracy.[22]

The protective principle of jurisdiction, under which a state may punish a crime committed by anyone anywhere which affects its national security, is in reality an extension of the territorial principle. While recognized by many states, it is generally regarded as an auxiliary basis for jurisdiction to be exercised only when no other basis applies.[23]

While all five of these bases for jurisdiction have been applied by some states, only territoriality and active nationality are universally recognized,[24] and these two principles seem to be of greatest importance in prosecution of aircraft hijackers since they cover the subjacent state and the state of registry in most cases. All of these principles might operate simultaneously to vest concurrent jurisdiction over a single aircraft hijacker in a large number of states. This situation can be illustrated by an actual 1961 case involving Alberto C. Cadon, a French citizen of Algeria temporarily resident in the United States, who hijacked a Pan-American DC-8 jet with 81 passengers over Mexico City on a flight from Mexico City to Guatemala and forced the pilot to land in Havana. Mexico could claim jurisdiction under the territorial principle. Since the hijacker was still in control of the aircraft when it landed in Cuba, the offense was presumably continuous so Cuba also could claim jurisdiction on a territorial basis. Since the hijacker was a French national, France could claim jurisdiction under the active nationality principle. The airliner was registered in the United States, so the "law of the flag" presumably would justify U.S. jurisdiction. Under the passive nationality principle, the states of the 81 kidnapped passengers, including the United States, Mexico, and a host of other states all could claim jurisdiction. If aircraft hijacking can be regarded as a form of piracy,[25] any state having custody of the offender could exercise jurisdiction under the universal principle. Finally, since the hijacker was threatening to shoot the pilot, Mexico could have exercised the protective principle since the potential crash of an uncontrolled jet in Mexico City certainly endangered the security of Mexico. In fact, Cuba returned the hijacker to Mexico for trial.[26]

While several states may have concurrent jurisdiction, international law

may not compel states to take jurisdiction when they lack it under their domestic law, nor can it compel a state to exercise its jurisdiction in any case.[27] Apprehension, detention, trial (including gathering of evidence and witnesses), and punishment is an expensive and time-consuming process which a state will not undertake in the absence of a substantial interest in suppression of the offense concerned.

Existence of Law. Both legal scholars and legislators have expressed concern over the absence of established international and municipal law covering crimes committed aboard aircraft in international flight. Lord McNair writes that "the position with regard to aircraft outside the territorial limits of criminal jurisdiction is regrettably obscure at common law."[28] Several scholars and legislators have expressed the fear that hijackers and other airborne criminals may go unpunished through the lack of applicable law conferring jurisdiction.[29] This fear may be unwarranted if hijacking is regarded as a continuous offense, punishable not only where it first occurred but also in all states through whose airspace the aircraft passed or landed.[30]

In the United Kingdom, McNair states that "such extensions as there are of the criminal jurisdiction . . . so as to cover acts done outside of the United Kingdom . . . apply only to British subjects."[31] A 1956 case, *Regina* v. *Martin* held that British jurisdiction did not extend to cover drug offenses committed by a British subject in flight aboard a British aircraft in the Middle East.[32] A later case, *Regina* v. *Naylor* (1962) affirmed jurisdiction in similar circumstances.[33]

In the United States the problem is also complicated by the question of venue. *United States* v. *Cordova* (1950) held that no Federal statute covered offenses committed on board a U.S. aircraft in flight over the high seas.[34] The Federal Aviation Act of 1958 cured this defect, but it still left unsolved the problem of venue, since it is extremely difficult to prove the exact location at which a crime occurred in an aircraft traveling at 500 miles per hour and crossing dozens of states and Federal judicial districts.[35] The Aircraft Piracy Act of 1961 enacted amendments to the 1958 Federal Aviation Act, defining a new crime of aircraft piracy, punishable by death, and providing for trial in any district in which the offense was committed, continued, or was completed.[36] Thus, even though international law may recognize jurisdiction over hijackers, conviction and punishment is dependent upon the existence of adequate municipal law authorizing jurisdiction as well as the will to exercise the jurisdiction so authorized.

Piracy. The definition of aircraft piracy as a crime under U.S. municipal law does not necessarily make hijacking piracy under international law.[37]

> According to international law, piracy consists in sailing the seas for private ends without authorization from the Government of any State with the object of committing depredations upon property or acts of violence against persons. The pirate . . . is a sea-robber, pillaging by force of arms, stealing or destroying the property of others and committing outrages of all kinds upon individuals.[38]

Oppenheim holds that piracy can only be committed on the high seas.[39] Piracy, as an offense against all nations, may be punished by any nation.[40]

Some legal scholars maintain that the 1958 Geneva Convention on the High Seas redefined piracy in article 15 to cover both ships and aircraft, but narrowed the definition of piracy so that acts committed on board a ship or

aircraft by the crew or passengers and directed against the aircraft itself cannot be regarded as acts of piracy.[41] Although numerous U.S. Senators and countless editors have referred to aircraft hijackers as pirates,[42] it must be concluded that no aircraft hijacking incident which has occurred so far can be characterized as piracy under either the Geneva Convention or customary international law.

Extradition and Asylum. Extradition is "the process by which persons charged with or convicted of crime against the law of a state and found in a foreign state are returned by the latter to the former for trial and punishment."[43] Since extradition is a process of international relations, diplomatic relations between the states concerned normally must exist in order to provide a channel for extradition requests and procedures. Although extradition is possible in the absence of a specific extradition treaty, it is normally covered by detailed bilateral treaties listing the procedures, offenses covered, conditions, and restrictions on extradition. Extradition treaties normally provide that the crime must be a recognized serious offense under the laws of both states.[44]

Under the laws of many countries, the extradition of nationals of the requested state is prohibited.[45] In other cases the treaty frequently allows an option as to whether nationals will be extradited. For example, the existing extradition treaty between the United States and Cuba provides that "neither of the contracting parties shall be bound to deliver up its own citizens."[46] Since many of the aircraft hijackings to Cuba have been committed by Cuban refugees, such a provision allows the Cuban Government to refuse extradition if it so chooses. Another problem is that extradition applies only to persons accused of an offense and does not cover witnesses.[47] Thus, the inability to secure the attendance of essential witnesses might preclude conviction.

A major provision of many extradition treaties is that they cover only offenses committed in the territory of the requesting state; the United States follows this policy in its extradition treaties.[48] Although the U.S. extradition treaty with Cuba covers offenses "committed within the jurisdiction" of either state,[49] the United States as recently as 1953 interpreted these identical words in a similar treaty with Greece to cover territorial jurisdiction only.[50] Thus, the treaty would not cover the hijacking of a U.S. airliner committed outside the territory of the United States, unless international law were construed to hold that a U.S. aircraft anywhere in the world is U.S. territory.[51] Furthermore, with the high speed of modern aircraft and the fact that an aircraft can pass through the territorial airspace of a number of small states in a relatively short space of time, it might be impossible to establish jurisdiction for extradition if the territorial principle were strictly followed.

Since the penal laws of many states prohibit the death penalty, the laws of those states usually prohibit extradition for capital offenses unless the requesting state agrees that the death penalty will not be imposed.[52] Air piracy under U.S. Federal law is punishable by death.[53] This death penalty may complicate or prevent extradition of hijackers from other states.

Another bar to extradition may be classification of the person as a political offender. "We are confronted with the impressive fact that in the legislation of modern states there are few principles so universally adopted as that of non-extradition of political offenders."[54] Whiteman devotes 59 pages to reviewing the history of nonextradition for political offenses, clearly demonstrating that each state has the option to extradite or refuse to extradite, as it chooses, and that the determination of what is a

political offense is at the sole discretion of the extraditing state.[55] This is particularly applicable in the case of aircraft hijacking since the uniform international practice in the hijacking cases reported in chapter I has been to construe as political offenses all hijackings committed in the course of escaping from an oppressive regime.

This concept is closely bound up with the so-called law of asylum. The notion of a political offense is fundamental to the concept of asylum. It is now recognized by all civilized states that ordinary criminals are to be extradited and that persons who fear punishment for political offenses may be granted asylum by the receiving state. The problem comes in determining what should be considered a political offense. There is no clear standard or precedent defining political offenses, and the international practice, especially in hijacking cases, has been to adopt an extremely broad definition. For example, the growing emphasis on the political nature of the reasons for the flight of refugees has led to an unfortunate tendency to disregard the illegality of any act which the asylum seeker may have committed in the process of escape.[56] In every case researched by this writer of a hijacked aircraft being landed in the United States, political asylum has been granted to the hijackers, even in cases in which pilots and aircraft guards have been murdered in the process of escape.

Conclusions. Current international law is not adequate to deal with hijacking. The most significant defects or problems include:

1. Jurisdiction over criminal offenses committed on board aircraft in flight over the high seas or territory other than that of the flag state is regrettably obscure. Territoriality is the primary basis for criminal jurisdiction in international law, and the "law of the flag," although well established for ships, is not clearly established for aircraft. The state with the greatest motivation for energetic prosecution of hijackers can reasonably be expected to be the state of registry of the aircraft since it is that state's property which is seized and that state's air commerce which is disrupted. Consequently, a rule vesting primary jurisdiction of crimes committed aboard aircraft in the State of registry, with full recognition of the established concurrent jurisdiction of the state(s) in whose airspace the offense occurred, would offer greatest promise of effective and energetic suppression of hijacking through criminal prosecution.

2. There are no specific provisions in international law requiring the prompt and speedy release of the aircraft, crew, and passengers by the state in whose territory the aircraft lands. There is only the general right of every nation to intercede to protect and advance the rights of its citizens and their property. The hijacking invariably causes an unscheduled delay in the flight, frequently involving a lengthy detour with consequent inconvenience and economic loss to both passengers and airline. If territoriality is the only universally recognized basis for prosecution, the state of landing may feel it necessary to detain the aircraft and passengers for investigation of the crime or as witnesses for trial. A general international obligation to expedite the release of the aircraft, passengers, and crew would help alleviate the effects of hijacking by reducing delay and economic loss.

3. Although not necessarily a defect in international law, the lack of adequate municipal law to cover offenses committed in flight outside the territorial limits of a country may operate to prevent effective prosecution of hijackers or even their extradition.[57] The only possible cure under international law for this problem would be the recognition of aircraft hijacking as a universal crime, and this development does not appear to be reasonably attainable in the foreseeable future.

4. The limitation of extradition to only those crimes justifiable under a strict territorial basis of jurisdiction, which seems to be a self-imposed limitation in the case of the United States, may preclude prosecution of hijackers or authorize it only by states which have little or no interest in vigorous prosecution.

5. The law of some states, precluding extradition of nationals, may operate to prevent prosecution of hijackers.

6. Finally, and probably most serious, is the regrettable tendency to regard as excusable, on the grounds of its being a political offense, almost any crime committed in the process of escaping from an oppressive regime. In this case, international law is not the problem but rather the political determination by the receiving state as to whether to admit the refugee and in what status. It seems difficult to justify protecting from prosecution an individual who committed murder of an aircraft crew member and kidnapped and endangered the lives of a hundred passengers in the course of escaping. Even if asylum is granted, there is no reason why the hijacker should not be prosecuted in the courts of the asylum state, which are not tainted by the suspicion of political motivation for judgment and sentence.

III—THE TOKYO CONVENTION

Introduction. A Convention on Offences and Certain Other Acts Committed on Board Aircraft was adopted at a conference held in Tokyo in 1963 under the sponsorship of the International Civil Aviation Organization (ICAO), a specialized agency of the United Nations. Since this paper is devoted solely to the problem of aircraft hijacking, only those portions and aspects of the Tokyo Convention which are relevant to hijacking will be analyzed.

Background. The Tokyo Convention climaxed many years of work by legal scholars on the problems of crime committed aboard aircraft in international flights. The Tokyo Convention had its origin in a decision by the ICAO Legal Committee, meeting at Montreal in 1950, to appoint a rapporteur. The emphasis in this early period was primarily on the need to define the rights and duties of the aircraft commander. In 1954 the ICAO Legal Committee established a subcommittee which solicited proposals from member nations. During this period the scope of its work broadened: in 1956 the United States submitted a paper dealing with problems of jurisdiction, and in 1958 the United States submitted a draft convention to the subcommittee. The ICAO Legal Committee, meeting in Munich in 1959, reviewed the work of its subcommittee and determined that the draft convention should deal both with jurisdiction and the legal position of the aircraft commander. The United States, its interest in hijacking obviously heightened by the rash of incidents in 1961, proposed in 1962 that a chapter on hijacking be added to the draft convention. The ICAO Legal Committee, meeting in Rome in 1962, after reviewing and modifying the draft determined that it was ready for consideration by the ICAO member nations. Accordingly, a conference was held at Tokyo from 20 August to 14 September 1963. Delegations of 61 states participated.[1]

Purposes of the Tokyo Convention. The broadest and principal purpose of the Tokyo Convention, that of enhancing the safety of international air commerce, is appropriate to the functions of its sponsor, the International Civil Aviation Organization. Robert P. Boyle, the Chief of the U.S. Delegation to the conference, lists four specific purposes:

1. To confirm the jurisdiction of the flag state over offenses committed aboard an aircraft in flight.

2. To confer power on the aircraft commander in order to enhance safety of flight.

3. To define the duties of the state where the aircraft lands after commission of the offense.

4. To deal with hijacking.[2]

A fifth purpose, not listed by Boyle, is evident from study of the convention: to define the rights and status of a person detained in a foreign state after commission of an offense.

Analysis of the Tokyo Convention[3]

Applicability. The convention applies to offenses committed aboard an aircraft in flight anywhere and also to offenses committed aboard an aircraft on the ground outside its state of registry.[4] However, the convention does not apply to aircraft used in military, customs, or police services[5] and thus would not have been applicable to the 9 February 1968 attempted hijacking of a commercial jetliner chartered for military airlift.

Jurisdiction. Paragraph 1 of article 3 is probably the most important provision of the convention, since it constitutes recognition by the contracting states of the jurisdiction of the state of registry over offenses committed aboard its aircraft, wherever situated, thus clearly establishing the "law of the flag" for aircraft[6] and going far toward establishment of a rule of law "regarding the aircraft for practical purposes as a tiny movable piece of national territory."[7] As President Johnson said in his message transmitting the Convention to the Senate for ratification,

> . . . a positive rule of international law is established between contracting states which provides that the State in which an aircraft is registered is competent to exercise jurisdiction over offenses committed aboard that aircraft when it is in flight . . . The Tokyo Convention does not establish a rule of exclusive jurisdiction; rather it assures that at least the State of registry will have the competence to exercise its jurisdiction while permitting the exercise of concurrent jurisdiction by other countries, depending upon their respective interests in the offense and the applicability of the traditional rules of international law regarding assertion of jurisdiction.[8]

As the President said, the jurisdiction of the flag state is not exclusive, and both article 4 and paragraph 3 of article 3 confirm other bases for jurisdiction, including the territorial, protective, active nationality, and passive nationality principles. However, the primary jurisdiction of the flag state is explicitly recognized by the provision in article 4 that other states (including the state in whose airspace the offense was committed) should not interfere with the flight of the aircraft in order to exercise jurisdiction unless the offense has direct effect on the territory or nationals of that state.[9] The convention also attempts to deal with the problem of the lack of jurisdiction, through the lack of adequate municipal law, by placing an obligation on each contracting state to "take such measures as may be necessary to establish its jurisdiction."[10]

Powers of the Aircraft Commander. Article 6 grants power to the aircraft commander to restrain any passenger or crew member who has committed or is about to commit an offense affecting the safety of flight. Article 8 allows the aircraft commander to disembark any person he considers a threat to the safety of flight, and article 9 allows him to deliver into the custody of any contracting state any person he

believes to have committed a serious offense aboard the aircraft. Article 10 protects the aircraft commander from both criminal and civil liability for exercise of these powers. These powers apply to international flights only.[11]

Duties of States. Article 11, the hijacking article, imposes a duty on contracting states to assist in restoring control of the aircraft to the aircraft commander and to expedite the continuation of the journey of the aircraft, passengers, and crew. Contracting states are required to allow the aircraft commander to disembark forcibly any passenger or crew member,[12] to accept delivery of persons suspected of an offense[13] to hold the offender in custody,[14] to conduct a preliminary investigation,[15] and to notify the flag state and provide to the flag state a report of the investigation.[16]

Extradition. Article 16 provides that offenses committed on board an aircraft outside the territorial jurisdiction of the flag state are to be regarded as having been committed in the territory of the flag state as well as in the place where they actually were committed.[17] This provision is intended to facilitate the use of existing extradition treaties, many of which apply only to offenses committed in the territory of the state requesting extradition.[18] However, paragraph 2 of article 16 emphasizes that the convention does not create any obligation to grant extradition, and article 2 states that the convention does not apply to offenses of a political nature.

Problems not Covered. The Tokyo Convention is as notable for what it does not do as for what it attempts to do. As an international convention, which could only come into force through ratification by states, it represents a compromise of what could be agreed to by the states participating and generally excludes or avoids controversial matters on which states have evidenced controversial views.[19]

The Tokyo Convention does not define or establish a crime of hijacking under international law. Whether or not a crime has been committed may be judged only by the national law of the applicable jurisdiction.[20] It does, however, oblige states to remove the effects of hijacking by restoring control to the aircraft commander and expediting the onward journey.

Nor does the convention deal with the problem of priority of jurisdiction where a number of states can claim jurisdiction on various bases. The conferees were unable to agree on a system of priority or whether in fact such a system was needed.[21] As the U.S. Delegate to the predecessor 1962 Rome Conference said, "conflicts of criminal jurisdiction had existed for hundreds of years in different fields of law, and there was no reason why those engaged in aviation should, at this time, attempt to solve such conflicts."[22]

Status of the Tokyo Convention. "Conventions are agreements made with the avowed object of making the rules which they promulgate universal."[23] As a multilateral treaty, a convention does not establish international law, but is recognized in article 38(1) of the Statute of the International Court of Justice as one of the sources of law "establishing rules expressly recognized by the Contracting States."[24] Generally, a convention is binding only with respect to contracting states.[25] However, a convention which has been ratified by most of the nations of the world, including the great powers, may be considered in time to have established customary international law, binding even on those states not parties to it.[26]

Article 21 of the Tokyo Convention provides that it will enter into force after it has been ratified by 12 states.

The United States has not ratified it yet, although President Johnson submitted it to the Senate on 25 September 1968 recommending ratification.[27] At that time, 29 states had signed the convention, but only six states had ratified it.[28] In view of the leading role of the United States in drafting the convention, the 5-year delay between signature of the Convention by the United States and its submission to the Senate for ratification can only be explained as bureaucratic inertia resulting from the absence of any significant hijacking problem between 1963 and 1968. Since then, two additional states have deposited ratifications, so that only four more are required to bring the convention into force.[29] Whether the convention will accomplish its purpose will ultimately depend not on its ratification by 12 or even 16 states, but on the extent to which nations with important aviation interests ratify it.[30]

Conclusions. The Tokyo Convention, if ratified, will go far toward eliminating the deficiencies in international law with respect to aircraft hijacking. The provisions for jurisdiction, clearly establishing, a "law of the flag" for aircraft, similar to maritime law, will ensure that the states with greatest interest in suppressing hijacking are competent to exercise jurisdiction. The imposition of a duty on states to restore control of the aircraft to its commander and to facilitate prompt release of the aircraft, crew, and passengers will remove some of the abuses in the Cuban and Algerian cases noted in chapter I. The imposition upon states of a duty to take custody of the hijacker and conduct a preliminary investigation will facilitate prosecution of hijackers.

However, as noted above, the convention does not define hijacking as an international crime, so that effective prosecution will still depend on the existence of adequate municipal law. Although the convention removes one important bar to extradition by defining an aircraft, for purposes of extradition, as territory of the flag state, it does not impose upon states a duty to extradite hijackers nor does it deal with the major problem of classifying hijackers as political offenders, thereby protecting them from extradition.

Lastly, the usefulness of the convention will depend upon how many of those nations with important air commerce and those nations which have thus far been havens for hijackers ratify it. The progress of ratification to date seems regrettably slow.

IV-SUPPRESSION OF HIJACKING

Technical Measures to Prevent Hijacking. Both the governments concerned and the airlines have devoted a great deal of attention and energy to technical measures designed to prevent hijackings. These measures generally fall into two major groupings: screening of passengers before they board the aircraft and measures designed to frustrate hijackers within the aircraft.

Screening of Passengers. The air carriers of the United States and of most other nations are in business to make a profit. Since their profit depends largely on their ability to increase their volume of passenger traffic, they are understandably reluctant to adopt any measures which frighten or discourage passengers. As one major airline executive said, "no airline is going to frisk its passengers."[1] The one reported case in which passengers were searched as a result of a telephoned tip that the aircraft would be hijacked produced no weapon, but most of the passengers "appeared frightened or irked."[2] To avoid this reaction and to avoid the horrendous time delays which would result from physically searching passengers at major airports, the U.S. Government has sponsored extensive research and development in an effort to find

mechanical screening devices which will neither delay nor frighten passengers. Various electronic devices to detect metal carried by passengers have been evaluated. Unfortunately, they detect keys, cigarette lighters, and other small metal objects as readily as they detect guns. The most encouraging U.S. effort has been the recent experimental development of a device which detects the odor of gunpowder. Presumably, a simultaneous detection of metal and gunpowder would indicate a high probability that the passenger was carrying a weapon.[3] Installation of such devices at hundreds of passenger loading areas at airports all over the United States from which aircraft depart for Florida would be extremely costly and would still not eliminate hijacking. No such device will stop the hijacker who uses a knife or claims to have a bottle of nitroglycerine or a package of dynamite or merely pretends to have a weapon.[4]

Resistance by the Aircraft Crew. Cuba has attempted to suppress hijacking by using police state methods. Commencing in 1960, Cuban militiamen armed with submachine guns have been stationed in the passenger compartments of Cuban aircraft. This has resulted in a number of aerial gun battles and the crash of at least one Cuban aircraft after such a gun battle but has reduced the number of successful hijackings of Cuban aircraft.

However, such methods are neither politically nor economically feasible for the United States, although some U.S. actions have been taken along these lines. One airline was reported in 1965 to be arming its pilots and armed Federal officers have ridden aircraft on a random basis.[5] To cover all such flights with armed guards would involve prohibitive costs. For example, just one airline serving Florida (Eastern) has a flight landing at Miami every 6 minutes, so that the total number of guards required would be astronomical.

In an attempt to frustrate hijackers within the aircraft, the Federal Aviation Administration issued regulations in 1961 requiring that the door to the flight crew compartment be kept locked during flight.[6] Many airlines have installed wide-angle vision devices in these doors so the flight crew can see who is outside before unlocking the door. The futility of these efforts to insulate the pilots from the hijackers is obvious from recent cases in which the stewardess in the passenger compartment is usually the first crew member threatened by the hijacker. If a hijacker merely remains in the passenger compartment, threatening to kill the stewardess or even a fellow passenger, the pilots will usually comply with his demands. Other suggestions for resistance by crew members have included the use of disabling gases or chemicals. These are unsuitable because they do not act swiftly enough to prevent a mentally unbalanced hijacker from shooting or exploding his bomb and because aircraft ventilating systems do not insulate the pilot or other passengers from their effects. A dosage adequate to incapacitate a hijacker swiftly may be fatal to a nearby passenger who has a weak heart or who is especially susceptible to the chemical.

Airline officials have generally concluded that resistance by crew members involves unwarranted hazards both for crew and passengers and that it is far more sensible to comply with the hijackers' demands. Typical of current airline policies are the following excerpts from instructions issued by Eastern Air Lines to its pilots:

> The most important consideration under the act of aircraft piracy is the safety of the lives of the passengers and crew. Any other factor is secondary. . . .
>
> In the fact [sic] of an armed threat to *any* crewmember, comply with the demands presented.

> Do not make an attempt to disarm, shoot out, or otherwise jeopardize the safety of the flight. . . . it is much more prudent to submit to a gunman's demands than to attempt action which may well jeopardize the lives of all on board.[7]

Extradition: The Core of the Problem. If hijacking cannot effectively be suppressed by technical measures applied within the state of registry to defend against hijacking, then the cure for this problem must be sought elsewhere. Airline executives, government officials, and legal scholars unanimously agree that the most effective way to suppress hijacking is to prosecute and punish hijackers. Even those hijackers who are mentally unbalanced exhibit an element of rational behavior by choosing to fly to a destination state where they expect to escape punishment. Thus, inevitability of punishment should act as a sufficient deterrent to reduce hijacking to a minimal level.

Experience has demonstrated that states rarely have sufficient motivation to prosecute and punish persons who hijack aircraft from another state.[8] Unless some unusually powerful motivation is generated to reverse this pattern, effective prosecution will continue to require returning the hijackers to the state of registry, which alone has a strong interest in prosecuting them.

Extradition, the normal international process of returning wanted criminals, usually requires the existence of an extradition treaty between the states concerned.[9] Furthermore, most extradition treaties permit extradition only for offenses listed in the treaty, and few such treaties cover hijacking. Since extradition is a process of bilateral international relations, it is virtually impossible to arrange in the absence of normal diplomatic relations between the states involved. Even if an extradition treaty which includes hijacking as an extraditable offense is in force between two states having normal diplomatic relations, the present almost universal international practice of granting asylum to hijackers who are considered refugees or political dissidents would act to bar extradition and subsequent prosecution in the majority of hijacking cases. Therefore, since extradition and prosecution are the most effective means of suppressing hijacking, diplomatic measures must be employed to remove the obstacles to extradition, especially to change the practice of granting asylum to hijackers.

Diplomatic Measures to Suppress Hijacking. Chapter I demonstrated that the only currently important destination state for hijackers was Cuba, which was the planned destination for 43 of the last 48 hijacking attempts (August 1967 through January 1969), and that all of these 43 aircraft were registered in the United States, Colombia, Venezuela, or Mexico. It becomes obvious that agreement by Cuba to extradite hijackers would virtually eliminate the problem of hijacking or at least reduce it to minimal proportions. It also becomes obvious that analysis of the attitude and policies of Cuba is urgently required, as is analysis of possible sources of diplomatic leverage for use in persuading Cuba to assist in suppressing hijacking.

Bilateral Negotiations with Cuba. The history of international relations clearly demonstrates that states act to promote their own national self-interest. In other words, effective international cooperation normally occurs only when there is some mutuality of interest in solving the problem or some element of reciprocity or *quid pro quo.* In the case of states having a large mutuality of interests and a long history of close and amicable relations, a state will frequently undertake, as a normal matter of promoting amicable relations, an

action of no direct benefit to itself which is desired by a friendly state. However, between states which are hostile, such actions cannot be anticipated without some clear element of reciprocity or *quid pro quo* which results in a benefit to the accommodating state to match the benefit gained by the requesting state.

International relations between Cuba and three of the countries most concerned, the United States, Colombia, and Venezuela, can only be characterized as hostile. The United States and Cuba severed diplomatic relations in January 1961. The Bay of Pigs episode certainly did not improve relations, and the United States has been the haven for a constant stream of political refugees from Cuba, some of which have left Cuba with the consent of the Cuban Government but many of which have hijacked aircraft, stolen boats, and killed or wounded Cuban security guards in the process of escaping. As for Colombia and Venezuela, Cuba not only has no diplomatic relations with these states, but has been actively implicated in support of insurgencies in both of these countries. In November 1968, Venezuela seized a Cuban fishing boat on the high seas on the suspicion it had been engaged in supporting Venezuelan insurgents,[10] and both Colombia and Venezuela have joined in OAS actions hostile to Cuba. Consequently, Cuba can only be expected to assist United States, Colombian, or Venezuelan efforts to suppress hijacking on a basis of reciprocity or *quid pro quo*.

The situation with Mexico is considerably different. Mexico and Canada are the only two American states with which Cuba maintains normal diplomatic and trade relations, and Cuba currently has scheduled commercial air service only with Mexico. There is substantial evidence that Cuba values highly its good relations with Mexico, both for propaganda and economic reasons and because Mexico provides a convenient channel for the movement of Cuban agents to Latin America. The only case in which Cuba has ever returned to another state for trial an aircraft hijacker, was one in which Cuba returned to Mexico for trial a man, who had hijacked a U.S. airliner in Mexican airspace. More recently, three aircraft of Mexican registry have been hijacked to Cuba, and Canada suffered one attempted hijacking in 1968.

Contrary to popular belief, there is no indication that Premier Castro has ever encouraged the hijacking of aircraft. In fact, Cuba has suffered from hijacking, and there are reasons to believe that Castro has an interest in suppressing it. In the 1959-1961 period Cuba was the victim of numerous hijackings in which most of the aircraft were flown to the United States, where the hijackers were granted asylum as political refugees. In a speech on 26 July 1961, Castro proposed that the United States and Cuba negotiate a treaty providing for the mutual return of seized aircraft.[11] A few days later Castro formally raised the subject of punishment of hijackers:

> There have been occasions when individuals have taken refuge in the United States who, in order to seize airplanes or boats, had murdered their crews. The fact that these acts have gone unpunished, thanks to the protection provided by the government of the United States to such individuals in its territory, encourages the repetition of such crimes . . .[12]

On 9 August 1961, the Colombian Foreign Minister was a passenger on an airliner which was hijacked to Cuba and quoted Premier Castro as saying "this should not happen again."[13] A second Cuban note on 11 Augnst 1961 formally proposed mutual extradition of hijackers:

> The government of Cuba considers that one of the most appropriate measures that both governments should adopt immediately by mutual agreement is to commit themselves to the immediate return of the persons responsible for those acts to the territory of the country to which the seized ship or plane may belong.[14]

No formal U.S. response to these notes have been reported, but the United States did release a number of Cuban aircraft,[15] and Cuba released the U.S. airliner it had been holding. The reasons for the apparent lack of interest on the part of the United States in pursuing the offer of mutual extradition of hijackers were twofold. First, while Cuba held only one U.S. hijacker, the United States had granted asylum to a number of Cuban refugee hijackers. Mutual extradition would have involved the United States in the distasteful task of returning political refugees which it had encouraged and welcomed. Second, the Cuban offer applied both to boats and aircraft, and the United States had no intention of returning the hundreds of Cuban refugees who had stolen boats to escape to the United States.

Since 1961 the Cuban Government has largely solved its aircraft hijacking problem through the repressive police state measures reported above. However, the solution adopted is costly to Cuba, since the expense of providing several armed guards on every domestic passenger flight must be substantial. Furthermore, it does not contribute to the image of a popular progressive government which Castro would like to portray, both to Cubans and to the outside world. So there is reason to believe Castro also has a self-interest in the suppression of hijacking through apprehension and prosecution of hijackers.

The Cuban Government has not recently sought to reap propaganda benefits from hijacking. The Havana press virtually ignores hijacking, reporting the arrival of hijacked aircraft in only a few lines without prominent display.[16] A Cuban security official recently told two U.S. reporters that Castro strongly disapproved of aircraft hijacking and that all hijackers were jailed upon arrival in Cuba.[17] In September 1968 Castro was quoted in a broadcast speech as saying: "All are welcome to Cuba except those who come by hijacking a plane."[18] The Cuban Delegate to the 16th Assembly of the International Civil Aviation Organization in Buenos Aires in September 1968 voted in favor of a resolution of condemning hijacking and urging states to place in effect the Tokyo Convention.[19] In fact, Cuba has implemented those portions of the Tokyo Convention which provide for prompt release of the aircraft, passengers, and crew and has even ceased its previous practice of harassing the United States by requiring the passengers to return on different aircraft.

Even though Cuban relations with the United States can only be described as hostile, there are still a number of other factors operating to persuade Cuba to take action to suppress hijacking. The first of these is the fact that further hijacking of Mexican aircraft to Cuba would probably lead to a deterioration in the presently amicable Cuban-Mexican relations, which Cuba appears to value. The second factor is that the possibility always exists that a U.S. passenger jet will crash upon landing at Havana because of pilot unfamiliarity with Havana, an irrational act by the hijacker, or the rudimentary nature of landing aids at Havana. Castro is never unaware of the power of the United States and surely must be aware of the strong anti-Cuban reaction such a catastrophe would undoubtedly cause in the United States. The third and most

potent factor is that Cuba has been and is being hurt by the cessation of normal economic relations with the United States and must be aware of the fragile nature of her dependence on a distant power, the U.S.S.R., for both economic support and protection against the United States. Cuban-United States relations, while still hostile, are perceptibly less hostile than they were some years ago, and Castro would be ill advised to allow hijacking, from which he reaps so little benefit, to cause further deterioration in his relations with the United States.

In summary, there is no evidence that Cuba has ever encouraged the hijacking of United States or Mexican airliners, except by granting asylum to the hijackers.[20] There are substantial reasons to believe that Cuba would be as eager as any other state to adopt a solution to the problem of hijacking, in order to remove it as an irritant in its relations with the United States and Mexico, provided the solution did not require Cuba to appear to be bowing to U.S. pressure.

Precisely because bilateral United States-Cuban negotiations are likely to be more fruitful when conducted in secrecy, relatively little information on recent United States-Cuban negotiations has emerged publicly. Two U.S. proposals made through the Swiss Government, which represents U.S. interests in Havana, have achieved at least partial success. Adopting a suggestion by Congressman Rogers of Florida, the United States proposed to Cuba on 10 July 1968 that any Cuban refugee in the United States desiring to return to Cuba be given a free ride on the Cuban Refugee Airlift.[21] Cuba must agree to the admission of such refugees before this proposal could be implemented. Consequently, this plan is not likely to result in the return of many refugees, since only those who have been unsuccessful in the United States are likely to desire repatriation, and such persons would probably represent more a liability than an asset to the Cuban economy. Nevertheless, the plan offers some propaganda advantages to Cuba, and Cuba has agreed in principle to the repatriation of some refugees on a selected basis.[22] The United States has submitted to Cuba through the Czechoslovakian Government an initial list of about 80 refugees desiring repatriation, and Cuba is currently studying the list.[23] The free ride offer is not likely to reduce significantly the number of aircraft hijackings, since relatively few are committed by lonesome Cuban refugees, but if it avoids a single hijacking, the effort will have been worthwhile. The second recent U.S. diplomatic initiative toward Cuba has been more successful. This was the proposal to expedite the release of hijacked aircraft and to permit the passengers to return to the United States on the same aircraft. The U.S. State Department announced Cuban acceptance of this proposal on 11 February 1969.[24] While this agreement reduces the inconvenience and financial loss to the passengers and airline, it contributes nothing toward the suppression of hijacking.

Press Coverage of Hijacking. It is evident that Cuba has not welcomed with open arms those who enter Cuba by hijacking an aircraft. In contrast to the impression created in hundreds of newspaper and magazine articles written in 1968 and earlier, the data presented in chapter I and in the preceding paragraphs clearly indicate that hijackers are usually treated rather harshly by Cuba. The U.S. Department of State recently commenced efforts to assist the press to portray more accurately the actual treatment accorded hijackers in Cuba in the hope that this would dissuade some of the attention seekers who hijack aircraft to Cuba in the expectation of achieving fame, glory, and financial reward. The success of this effort is evident in the markedly changed tone of

newspaper coverage of hijacking in 1969. While this change in press emphasis has not yet produced a notable diminution in hijacking attempts, the effort is sound and worthwhile and should be continued and intensified.

Multilateral Negotiations. Although the Cuban Government has reasons to desire the suppression of hijacking, it would find it difficult to adopt measures having the appearance of bowing to U.S. pressures. Consequently, multilateral negotiations or efforts through international organizations are more likely to produce Cuban agreement, especially if U.S. sponsorship of these proposals is not visible.

The International Civil Aviation Organization (ICAO), of which Cuba is a member state, is one useful forum for efforts to suppress hijacking. As discussed in chapter III, the ICAO was the agency through which the Tokyo Convention was negotiated. While Cuba has not yet ratified this convention, it did vote in favor of the recent ICAO Resolution urging ratification of the Tokyo Convention and proposing the development of still further measures for the suppression of hijacking. Although the Tokyo Convention fails to attack the root causes of hijacking, implementation of it would alleviate the effects of hijacking and would establish procedural machinery which could be very useful if a way around the impasse of extradition could be developed. Consequently, ICAO efforts to encourage ratification and implementation of the Tokyo Convention should be continued, and the United States should not only expedite its own ratification of the convention but should also urge Mexico, Colombia, Venezuela, and other states which have suffered from hijacking to ratify it.

The ICAO Council in December 1968 passed a resolution condemning hijacking and urging that member states take measures to suppress it.[25] Knut Hammarskjold, the Director General of the International Air Transport Association, and international organization of air carriers which works closely with the ICAO, announced on 13 January 1969 plans to seek U.N. action on hijacking and said hijacking should be defined as an international crime.[26] Hammarskjold also visited Havana in mid-January[27] and may have been instrumental in promoting the measures recently instituted by Cuba to alleviate the effects of hijacking.

On 31 January 1969 the United States submitted to the ICAO a draft protocol defining hijacking as an international crime and providing for mandatory arrest and extradition of the hijacker to the state of registry of the aircraft. The draft protocol made no exception for political offenders, but did not require extradition of nationals of the requested state provided such persons were tried or punished by their own governments.[28] The protocol was so formulated as to allow adherence to the protocol by states which might be unwilling to ratify the Tokyo Convention as a whole.[29] When this draft protocol was considered by the ICAO subcommittee, a number of states, including Great Britain, France, Denmark, and Tunisia, opposed it on the grounds that they could not agree to foreclose the possibility of asylum for political offenders. Consequently, the subcommittee emasculated the protocol, reducing it to a statement encouraging either prosecution of the hijacker by the destination state or extradition to the flag state, but making neither action mandatory.[30]

The possibility of a multilateral embargo on air commerce to Cuba has been suggested as one means to bring pressure on the Cuban Government. The International Federation of Air Line Pilots Associations threatened on two occasions to impose a boycott on air traffic to Algeria in order to force Algerian release of the crews of two

hijacked aircraft. The IFALPA has contingency plans for a similar boycott against Cuba, but they will probably never be used because less than half of Cuban international air commerce is flown by IFALPA pilots, and Cuba has been careful to release hijacked aircraft and crews.[31] An embargo would probably not be effective in halting Cuban air commerce with the Communist bloc and might be counterproductive in reversing the progress made so far toward inducing Cuban discouragement of hijacking.

Asylum: the Stumbling Block. The Tokyo Convention fails to deal with the problem of treating hijackers as political offenders eligible for asylum. The U.S. proposal for a protocol making extradition mandatory assumes that states will agree to dilute the time-honored principle of political asylum by excluding hijackers from its benefits. The reported negative reactions of some European states to this proposal are matched by similar negative reactions in the U.S. press.[32] Some hijackings analyzed in chapter I were, in fact, political acts by organized political dissidents for which asylum would have been appropriate under traditional concepts. But these relatively few political acts are not the problem; rather the problem is the past practice of prostituting the concept of asylum into protection of criminals by granting asylum as political offenders to hijackers whose offense had not the remotest relationship to organized political opposition.

If an international agreement supplementary to the Tokyo Convention could be negotiated and implemented which declares hijacking to be an international crime, similar to piracy, and which obligates states to grant extradition to the flag state, *except for political offenses,* several of the more important bars to prosecution of hijackers would have been removed. Such an agreement appears to this writer to be attainable, so long as it does not attempt to close the door to political asylum for purely political offenses and is not too closely identified with the United States as sponsoring power, in order that Cuba can accede to it without publicly embracing a U.S. proposal.

The problem of treating hijacking as a political offense can then be dealt with in practice. A keystone of international relations is the principle of reciprocity. The United States has already taken a useful step along this line in the announcement by Deputy Assistant Secretary of State Frank E. Loy before the House Committee on Interstate and Foreign Commerce on 5 February 1969 of a new U.S. policy "that the hijacker of a commercial airliner carrying passengers should be returned regardless of any claim that he was fleeing political persecution."[33] While the present international climate does not indicate that states will bind themselves in writing to discard the principle of political asylum, it should be possible to induce in reciprocal practice a more limited and realistic definition of what is a political offense, so as to close this loophole for most hijackers. While this would not completely suppress hijacking, the number of hijackings which can fairly be classified as political acts has never exceeded two per year. Suppression of hijacking to such a level would make it disappear as a significant threat to orderly international air commerce.

V—CONCLUSIONS

The patterns of hijacking analyzed in this paper reveal a number of consistent trends. The incidence of hijacking is rising, and Cuba is currently the only important destination state. Although the United States suffers most from hijacking, other Caribbean states are also important victims, especially Colombia, Venezuela, and Mexico. There has been a general tendency on

the part of all nations to grant asylum to hijackers, thereby encouraging others to follow their example. The majority of hijackers are, contrary to public opinion, not homesick refugees but attention seekers and unbalanced persons. The latter group are often failures in American society and regard Cuba as a haven in which they can start life anew in a better status.

Current international law is not adequate to deal with the problem of hijacking. Jurisdiction over criminal offenses committed on board aircraft in flight over the high seas or territory other than that of the flag state is regrettably obscure. A sensible solution to the problem would entail vesting primary jurisdiction to the state of registry, with concurrent jurisdiction being granted to the state(s) in whose airspace the offense occurred. A general international obligation to expedite the release of the aircraft, passengers, and crew would help alleviate the effects of hijacking by reducing the delay and economic loss. There is also a regrettable tendency to regard as excusable, on the grounds of its being a political offense, almost any crime committed in the process of escaping from an oppressive regime.

Many of these shortcomings are dealt with by the Tokyo Convention of 1963 which was sponsored by the International Civil Aviation Organization, a specialized agency of the United Nations. This convention, if ratified, will go far toward eliminating the deficiencies in international law with respect to aircraft hijacking. It clearly establishes a "law of the flag" for aircraft, similar to that long in use in maritime law. It imposes upon all states the duty of restoring control of the aircraft to its commander and facilitating the prompt release of the aircraft, its crew, and its passengers. It does not, however, define hijacking as an international crime or impose upon states the duty of extraditing hijackers.

Technical measures to prevent hijacking can never be more than partially successful, but present efforts to devise an effective method of screening passengers before they board the aircraft should be continued until a solution can be found to the problem of extradition. Present U.S. airlines policies of discouraging resistance to the hijacker by aircraft crew members are sound, since such resistance needlessly endangers the lives of passengers.

The key to suppression of hijacking is effective prosecution of hijackers, and the core of this problem is the existing bar to extradition. The only currently important destination state for hijackers is Cuba, but, contrary to public opinion, the Castro government has done nothing to encourage hijacking. Although the Cuban Government has some self-interest in the suppression of hijacking, bilateral United States-Cuban negotiations are not likely to be very productive in the absence of a major improvement in overall United States-Cuban relations. Multilateral negotiations, especially through the ICAO, are more likely to bear fruit, particularly if the

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proposals are not visibly sponsored by the United States.

The United States, working in the background through other states such as Canada and Mexico, should seek to promote ICAO sponsorship of a convention or protocol defining hijacking as an international crime for which nations would agree to grant extradition to the flag state, even in the absence of an applicable bilateral extradition treaty and normal diplomatic relations, except in cases where the hijacking was a political offense.

Attempts to achieve formal written multilateral agreement on exclusion of hijackers from political asylum are not likely to be successful. However, it may be possible to arrive at a more limited definition of political offenses which would not apply to most hijackings.

FOOTNOTES

I—PATTERNS OF HIJACKING

1. "The Lunatic Core," *The Nation,* 26 August 1961, p. 90.

2. Interview with Mr. George Clift, Office of the Coordinator of Cuban Affairs, U.S. Dept. of State, Washington, 28 January 1969.

3. "A.E.C. Protects Papers from Loss in Hijacking," *The New York Times,* 28 January 1969, p. 85:6; "The President Finds 'a Good Place to Think,'" *Life,* 21 February 1969, p. 27.

4. Marjorie M. Whiteman, ed. *Digest of International Law* (Washington: U.S. Govt. Print. Off., 1968), v. VI, p. 808-810.

5. "Cuba Returns Electra," *Aviation Week & Space Technology,* 21 August 1961, p. 50.

6. Cuba has scheduled commercial air service only to Mexico, Spain, and the various Soviet bloc nations.

7. "What Can Be Done about Skyjacking?" *Time,* 31 January 1969, p. 19-20.

8. "Cuba Returns Electra," p. 50.

9. "The Lunatic Core," p. 90.

10. Juan de Onis, "Havana Accepts U.S. Plan to Help Hijacking Victims," *The New York Times,* 12 February 1969, p. 1:1.

11. *Ibid.,* "Cuba Is Holding Venezuelan Jet," *The New York Times,* 13 February 1969, p. 90:6; "Payment Made to Cuba," *The New York Times,* 18 February 1969, p. 81:4.

12. In one case the two hijackers were deported aboard an airliner destined for the United States, apparently as suspected CIA agents. *Miami* (Florida) *Herald,* 13 October 1968, p. F1:1.

13. Cuba recently permitted the voluntary departure of three men who had hijacked U.S. aircraft to Cuba. All three cases involved hijackings of chartered aircraft. Leonard S. Bendicks was allowed to go to Canada then reentered the United States in October 1968. He was apprehended in New York State and was charged with air piracy. He is currently confined in a mental institution, as incapable of standing trial. The second returnee, Willis Jessie, voluntarily returned to the United States, knowing he would be tried both for air piracy and for desertion from the U.S. Army. Jessie stated whatever punishment he received would be better than life in a Cuban prison. He is currently awaiting trial. The third returnee, Alben William Barkley Truitt, was allowed to go to Canada and is currently trying to avoid deportation from Canada to the United States for trial. Interview with Mr. Clift, 28 January 1969.

14. In December 1960, Cuba executed five Cubans who had attempted to hijack an airliner to Miami on 8 December 1960. The U.S.S.R. also has executed hijackers. The United States sentenced one hijacker to 20 years' imprisonment.

II—CURRENT INTERNATIONAL LAW

1. "Convention Relating to the Regulation of Aerial Navigation," U.S. Library of Congress, Law Library, *Air Laws and Treaties of the World* (Washington: U.S. Govt. Print. Off., 1965), v. III, p. 3085.

2. "Convention on Commercial Aviation, Article 1," *ibid.,* p. 3094; "Convention on International Civil Aviation, Article 1," *ibid.,* p. 3166; U.S. Laws, Statutes, etc., *United States Statutes at Large,* Public Law 85-726, 85th Congress (Washington: U.S. Govt. Print. Off., 1958), v. LXXII, p. 798.

3. U.S. Dept. of State paper (1956) submitted to the International Civil Aviation Organization (ICAO) Legal Committee, quoted in Robert P. Boyle and Roy Pulsifer, "The Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft." *Journal of Air Law and Commerce,* Autumn 1964, p. 305-354.

4. David H.N. Johnson, *Rights in Air Space* (Manchester, Eng.: Manchester University Press, 1965), p. 74.

5. John C. Cooper, "Backgrounds of International Public Air Law," *Yearbook of Air and Space Law* (1965) (Montreal: McGill University Press, 1967), p. 31-37.

6. "Convention on International Civil Aviation, Articles 17-21," *Air Laws and Treaties of the World,* v. III, p. 3171.

7. Henry C. Black, *Black's Law Dictionary,* rev. 4th ed. (St. Paul: West, 1960), p. 991.

8. Daniel P. O'Connell, *International Law* (Dobbs Ferry, N.Y.: Oceana, 1965), v. II, p. 659.

9. Johnson, p. 75.

10. *Ibid.,* Boyle and Pulsifer, p. 312; William W. Bishop, Jr., *International Law,* 2d ed. (Boston: Little, Brown, 1962), p. 443.

11. Decision of the Permanent Court of International Justice in the *Lotus* (1927), quoted in O'Connell, v. II, p. 657.

12. Bishop, p. 463; O'Connell, v. I, p. 463; O'Connell, v. II, p. 898; Statement of Representative John A. Blatnick, quoted in U.S. Congress, House, Interstate and Foreign Commerce Committee, *Crimes on Board Aircraft,* Hearings (Washington: U.S. Govt. Print, Off., 1961), p. 20.

13. Bishop, p. 659.

14. Johnson, p. 75; O'Connell, v. II, p. 896-898; Christopher N. Shawcross and Kenneth M. Beaumont, *Shawcross and Beaumont on Air Law,* 3d ed. (London: Butterworths, 1966), v. I, p. 28.

15. Harvard Research in International Law, Jurisdiction with Respect to Crime (1935), quoted in Bishop, p. 440, 463; Baron Arnold D. McNair, *The Law of the Air,* 3d ed. (London: Stevens, 1964), p. 277.

16. O'Connell, v. II, p. 661-666; The *Lotus,* quoted in O'Connell, v. II, p. 662. Baron McNair, p. 260-270, agrees that ships are regarded as movable territory but concludes that aircraft have not yet reached this status. Professor Cooper, *op. cit.,* p. 31-37, agrees with McNair. See also James W. Moore and Alfred S. Pelaez, "Admiralty Jurisdiction—the Sky's the Limit," *Journal of Air Law and Commerce,* Winter 1967, p. 3-38; Myres S. McDougal, et al., "The Maintenance of Public Order at Sea and the Nationality of Ships," *American Journal of International Law,* January 1960, p. 26, 82. Kamminga, in "The Aircraft Commander in Commercial Air Transportation," quoted in McDougal, et al., holds that the registry of the aircraft determines jurisdiction under the active nationality principle.

17. Also known as passive personality principle.

18. *Shawcross and Beaumont on Air Law,* p. 28; Boyle and Pulsifer, p. 312.

19. O'Connell, v. II, p. 901-2.

20. Bishop, p. 465. In the Cutting Case (1886) and the Fiedler case (1940), the United States is on record as opposing jurisdiction under the passive nationality principle. Whiteman, v. VI, p. 103-105; Bishop, p. 460.

21. Johnson, p. 75.

22. Bishop, p. 466-467; O'Connell, v. II, p. 715; *Black's Law Dictionary,* p. 1306.

23. Johnson, p. 75; Bishop, p. 464; Harvard Research in International Law, Jurisdiction with Respect to Crime, Article 7 quoted in Bishop, p. 462.

24. Bishop, p. 463-464; Boyle and Pulsifer, p. 312.

25. See discussion of piracy below.

26. Gerald F. FitzGerald, "The Development of International Rules concerning Offences and Certain Other Acts Committed on Board Aircraft," *Canadian Yearbook of International Law 1963* (Vancouver: University of British Columbia, 1963), p. 240, note 24.

27. Johnson, p. 77.

28. McNair, p. 272.

29. Boyle and Pulsifer, p. 310, 316; FitzGerald, p. 230; *Crimes on Board Aircraft,* p. 20; Laurence Doty, "Air Crimes Convention Supported Heavily," *Aviation Week & Space Technology,* 18 November 1968, p. 60.

30. O'Connell, v. II, p. 901.

31. McNair, p. 277.

32. McNair, p. 94. This decision was based on an interpretation that the British Drug Acts were not intended to apply outside the territory of the United Kingdom.

33. *Ibid. Regina* v. *Naylor* involved a theft of jewelry by a British subject aboard an aircraft. The same court, with a different Chief Justice presiding, decided that the law in this case did apply aboard an aircraft in flight outside the airspace of the United Kingdom. The decision referred to the earlier Martin case and left little doubt that the present court considered the earlier decision to have been an unduly narrow interpretation of the law.

34. DeFrost Billyou, *Air Law*, 2d ed. (New York: Ad Press, 1964), v. I, p. 177-180; Francis J. Gist, Jr., "The Aircraft Hijacker and International Law," Unpublished Thesis, Institute of Air and Space Law, McGill University, Montreal: 1968, p. 51.

35. *Crimes on Board Aircraft*, p. 20.

36. Public Law 97-197 defines "aircraft piracy" as "any seizure or exercise of control, by force or violence or threat of force or violence and with wrongful intent, of an aircraft in flight in air commerce." U.S. Laws, Statutes, etc., *United States Statutes at Large*, Public Law 87-197, 87th Congress (Washington: U.S. Govt. Print. Off., 1961), v. LXXV, p. 466.

37. O'Connell, v. II, p. 717; Gist, p. 5; *Black's Law Dictionary*, p. 1306.

38. Subcommittee of the League of Nations Committee of Experts for the Progressive Codification of International Law, quoted in Bishop, p. 466.

39. Quoted in Gist, p. 11.

40. "Piracy," *Corpus Juris Secundus* (Brooklyn, N.Y.: American Law Book Co., 1951), v. LXX, sec. 2; O'Connell, v. II, p. 715; Bishop, p. 466-467; McDougal, et al., p. 75-76.

41. Boyle and Pulsifer, p. 325; Gist, p. 55, 116; and Commentary to the 1956 draft of the International Law Commission on the Law of the Sea, quoted in Whiteman, v. IV, p. 658-659.

42. For example, Senators Williams, Holland, and Keating in a 1961 Senate debate reported in "Castro: One Step Too Far?" *U.S. News & World Report*, 7 August 1961, p. 37.

43. Whiteman, v. VI, p. 727.

44. *Ibid.*, p. 727-728.

45. *Ibid.*, p. 865.

46. "Extradition Treaty, 1904," *U.S. Treaties, Conventions, International Acts, Protocols and Agreements between the United States of America and Other Powers* (Washington: U.S. Govt. Print. Off., 1910), v. I, p. 369, art. V.

47. Whiteman, v. VI, p. 727.

48. *Ibid.*, p. 889-890.

49. "Extradition Treaty, 1904," p. 367, art. 1.

50. The Secretary of State (Dulles) to the Ambassador of Greece (Politis), 8 July 1953, quoted in Whiteman, v. VI, p. 890.

51. Boyle and Pulsifer, p. 316. A recent British case, *Regina* v. *Governor of Brixton Prison* (1958), held that a ship was territory of the flag state, within the meaning of the term "territory" as used in a British extradition treaty. E. Lauterpacht, "The Contemporary Treaties of the United Kingdom in the Field of International Law—Survey and Comment, VII," *International and Comparative Law Quarterly*, January 1959, p. 185. However, it is doubtful that an aircraft has the same status as a vessel. See note 16, *supra*.

52. Whiteman, v. VI, p. 885; Alona E. Evans, "The New Extradition Treaties of the United States," *American Journal of International Law*, April 1965, p. 360-361.

53. *United States Statutes at Large*, v. LXXV, p. 466.

54. Hersh Lauterpacht, "The Law of Nations and the Punishment of War Crimes," quoted in Whiteman, v. VI, p. 853; Evans, p. 360.

55. Whiteman, v. VI, p. 799-857. See also Frank E. Krenz, "The Refugee as a Subject of International Law," *International and Comparative Law Quarterly*, January 1966, p. 101; Evans, p. 360; Shigeru Oda, "The Individual in International Law," Max Sorenson, ed., *Manual of Public International Law* (London: Macmillan, 1968), p. 491.

56. Krenz, p. 101-102.

57. Extradition treaties frequently prohibit extradition if the offense is not a crime under the laws of both states.

III—THE TOKYO CONVENTION

1. Boyle and Pulsifer, p. 307-320.

2. *Ibid.*, p. 328.

3. The text of the Tokyo Convention ("Convention on Offences and Certain Other Acts Committed on Board Aircraft") is printed in Billyou, p. 651-659; McNair, Appendix 10, p. 535-542; "Official Documents," *American Journal of International Law*, April 1964, p. 566-573; U.S. Congress, House, Committee on Foreign Affairs, *Air Piracy in the Caribbean Area* (Washington: U.S. Govt. Print. Off., 1968), p. 21-27

4. Tokyo Convention, art. I, par. 2. However, the chapter dealing with the powers of the aircraft commander applies only to international flights (art. 5, par. 1).

5. *Ibid.*, art. 1, par. 4.

6. Boyle and Pulsifer, p. 333.

7. "Crime in the Air," *The Economist*, 31 August 1963, p. 773.

8. "Convention on Offenses and Certain Other Acts Committed on Board Aircraft—Removal of Injunction of Secrecy," *Congressional Record*, 25 September 1968. p. S11450.

9. Gerald F. FitzGerald, "Offences and Certain Other Acts Committed on Board Aircraft: The Tokyo Convention of 1963," *Canadian Yearbook of International Law, 1964* (Vancouver: University of British Columbia, 1964), v. II, p. 195; Boyle and Pulsifer, p. 336. Boyle notes the similarity of article 4 to article 19(1) of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone.

10. Tokyo Convention, art. 3, par. 2.

11. Boyle and Pulsifer, p. 337-342; note 4, *supra*.

12. Tokyo Convention, art. 12.

13. *Ibid.*, art. 13, par. 1.

14. *Ibid.*, art. 13, par 2.

15. *Ibid.*, art. 13, par. 4.

16. *Ibid.*, art. 13, par. 5.

17. FitzGerald, "Offences and Certain Other Acts Committed on Board Aircraft," p. 201.

18. FitzGerald, "The Development of International Rules Concerning Offences and Certain Other Acts Committed on Board Aircraft," p. 250; Boyle and Pulsifer, p. 351.

19. Boyle and Pulsifer, p. 306.

20. *Ibid.*, p. 345; Billyou, p. 188.

21. Boyle and Pulsifer, p. 317.

22. Quoted in *Shawcross and Beaumont on Air Law*, v. I, p. 706.

23. Shawcross and Beaumont, quoted in Juan J. Lopez Gutierrez, "Should the Tokyo Convention of 1963 Be Ratified?" *Journal of Air Law and Commerce*, Winter 1965, p. 13.

24. Quoted in *Shawcross and Beaumont on Air Law*, v. I, p. 26.

25. *Ibid.*, p. 32; Hackworth, quoted in Bishop, p. 31.

26. Pollock, quoted in Bishop, p. 33; O'Connell, v. I, p. 24-26.

27. "Convention on Offenses and Certain Other Acts . . . ," p. S11449-S11450.

28. *Ibid.*, p. S11449. The six states who have ratified it are the Republic of China (Taiwan), Denmark, Sweden, Norway, Portugal, and the Philippines. Alvin Shuster, "Hijacking and What Can Be Done about It," *The New York Times*, 18 August 1968, IV, p. 5E:1.

29. Italy and the United Kingdom both ratified the convention in 1968. Interview with Mr. Harry Feehan, Office of Aviation, U.S. Dept. of State, Washington, 28 January 1969.

30. Boyle and Pulsifer, p. 305.

IV—SUPPRESSION OF HIJACKING

1. "Travel: Coffee, Tea or Rum?" *Newsweek*, 29 July 1968, p. 30-31.

2. "Jet Passengers Searched after False Hijacking Call," *The New York Times*, 8 October 1968, p. 11:1.

3. Interview with Mr. Harry Feehan.

4. *Air Piracy in the Caribbean Area*, p. 5; Robert D. McFadden, "Airlines Trying Number of Ways to Foil Hijackers," *The New York Times*, 20 January 1969, p. 16:5; "Hijacking," *The New York Times*, 2 February 1969, p. 6E:1. As one airline pilot said, "we give people a lethal weapon every time we hand out knives with the silverware." Douglas Robinson, "Hijacking Victims Term Treatment by Cuban Hosts Royal but Tiresome," *The New York Times*, 9 February 1969, p. 79:3.

5. George Horne, "Pilots Learning Arts of Defense," *The New York Times*, 7 September 1965, p. 77:1; "Riding Shotgun in the Sky," *Business Week*, 19 August 1961, p. 36; *Air Piracy in the Caribbean Area*, p. 5.

6. *Air Piracy in the Caribbean Area*, p. 4.

7. Eastern Airlines Instructions to Flight Officers, 27 March 1968, printed in *Air Piracy in the Caribbean Area*, p. 14.

8. The only recorded case in which a state prosecuted a person who hijacked an aircraft registered in some other state was one in which Mexico prosecuted a French citizen who hijacked a U.S. airliner in Mexican airspace. See discussion of prosecution in chapter I, *supra*.

9. Although the existence of such a treaty is not an absolute necessity, return of criminals in the absence of such a treaty is relatively rare. The bilateral extradition treaty between the

United States and Cuba is listed in *Treaties in Force* (Washington: U.S. Dept. of State, 1968), p. 85, as being in effect, but U.S. Government officials have expressed doubt as to whether it is still in force. Interview with Mr. K.E. Malmborg, Office of the Legal Advisor, U.S. Dept. of State, Washington, 29 January 1969; "Cuba: Partial Solution to Hijackings 'Two-Way' Refugee Airlift?" *Foreign Policy Briefs,* 30 December 1968, p. 1; *Air Piracy in the Caribbean Area,* p. 6.

10. "Payment Made to Cuba," p. 81:4.

11. "Castro Wants his Planes Back in Return for the U.S. Airliner," *The New York Times,* 27 July 1961, p. 4:2; James Feron, "Rusk Turns Down Castro Bid for Exchange of Seized Planes," *The New York Times,* 28 July 1961, p. 1:7, 7:4. Note that this offer was made 2 days after the first U.S. airliner was hijacked to Cuba (24 July 1961) and while Cuba was refusing to release the U.S. aircraft until the United States agreed to return a number of hijacked Cuban aircraft. Thus, Cuba for this first time had some leverage for use in negotiation with the United States for return of seized aircraft. Castro publicly repeated this offer a few days later. Laurence O'Kane, "Cuba to Give Plane to U.N. to Balk U.S. 'Aggression,'" *The New York Times,* 30 July 1961, p. 1:6.

12. Cuban Government Note of 4 August 1961 to U.S. Government, transmitted through the Swiss Embassy in Havana. "Cuba Releases Electra Airplane; U.S. Returns Naval Vessel," *The Department of State Bulletin,* 4 September 1961, p. 407-408.

13. Richard Witkin, "Jetliner Seized, Flown to Havana; Cuba Releases It," *The New York Times,* 10 August 1961, p. 1:4.

14. Cuban Government Note of 11 August 1961 to U.S. Government, transmitted through Swiss Embassy in Havana. "Cuba Releases Electra Airplane," p. 408.

15. Some of these Cuban aircraft had been hijacked to the United States, and others had been seized by writ of attachment to satisfy the Harris claims.

16. Interview with Mr. Clift; *Air Piracy in the Caribbean Area,* p. 3.

17. "Cuban Opposition to Hijacking Seen," *The New York Times,* 31 July 1968, p. 2:3.

18. Interview with Mr. Clift.

19. ICAO Resolution A16-37. Text of this resolution is printed in *Air Piracy in the Caribbean Area,* p. 6-7.

20. The evidence of Cuban *noncomplicity* is not so clear with respect to hijacking of Colombian and Venezuelan aircraft to Cuba. However, even in these cases, the available evidence does not indicate that Cuba has actually encouraged the hijacking but, rather, has condoned it as a convenience to Castroite guerrillas.

21. "Action by U.S. Urged," *The New York Times,* 3 July 1968, p. 70:6; and "Cuba: Partial Solution to Hijackings 'Two-Way' Refugee Airlift?" p. 1.

22. De Onis, p. 1:1.

23. Interview with Mr. Feehan.

24. De Onis, p. 1:1.

25. Interview with Mr. Malmborg.

26. *Miami* (Florida) *Herald,* 14 January 1969, p. 1:1.

27. "What Can Be Done about Hijacking?" p. 20.

28. International Civil Aviation Organization, "Draft Proposals on Unlawful Seizure of Aircraft, Appendix C, LC/SC SA WD 14," *International Legal Materials,* March 1969, p. 256-257.

29. Interview with Mr. Malmborg.

30. Edward Cowan, "Accord Drafted to Curb Hijacking," *The New York Times,* 22 February 1969, p. 58:8.

31. "What Can Be Done about Skyjacking?" p. 19-20.

32. Richard Witkin, "To Combat Air Piracy," *The New York Times,* 13 August 1961, IV, p. 6E:6; "Tragedy in the Wings," *The New York Times,* 14 February 1969, p. 38:2.

33. Robert Lindsey, "U.S. Wants Accord to Return Hijackers," *The New York Times,* 6 February 1969, p. 77:3. The author was advised in interviews on 28-29 January 1969 with Mr. Malmborg and Mr. Feehan of the U.S. Dept. of State that the United States had decided to implement this new policy in the hope of inducing reciprocity by other states.